

## SENATE, No. 2261

[Senate, February 8, 2010 - New draft reported on Senate, No. 400 from the committee on Environmental, Natural Resources and Agriculture.]



## The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND NINE

### AN ACT AUTHORIZING THE ISSUANCE OF LICENSES FOR THE SALE OF WINE AT CERTAIN PREMISES.

*Be it enacted by the Senate and House of Representatives in General Court assembled,*

*And by the authority of the same, as follows:*

**SECTION 1.** Section 12 of said chapter 138, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:

The local licensing authority of any city or town wherein the granting of licenses under this section is authorized, irrespective of any limitation of number of licenses contained in section seventeen, may issue a license to the holder of a farmer-winery license under section 19B or in any other state for service to travelers, strangers, and other patrons and customers not under twenty-one (21) years of age, such wine to be served and drunk on the premises of the winery at

8 such locations on the premises of the farm as the local licensing authority may deem reasonable  
9 and proper. For purposes of this section, a farm is defined by Chapter 128, Section 1A.

10 **SECTION 2.** Section 15 of said chapter 138, as so appearing, is hereby amended by  
11 inserting after the words “and 19C”, in the first paragraph, the following words: “, or to an  
12 applicant licensed to operate as a farmer-winery under section 19B or in any other state.”

13 **SECTION 3.** Section 15 of said chapter 138, as so appearing, is hereby amended by  
14 inserting after the “licensing fee”, in the second paragraph, the following words: “and nothing  
15 shall prohibit the local licensing authority from establishing reduced fees for special licenses  
16 issued pursuant to Section 15F of this Chapter.”

17 **SECTION 4.** Chapter 138 of the General Laws is hereby amended by inserting after  
18 section 15E the following section:-

19 Section 15F. Special licenses to a Farmer-Winery for the sale of wines at agricultural  
20 events; fees

21 Notwithstanding any other provision of Chapter 138, in any city or town wherein the  
22 granting of licenses to sell wine is authorized under this chapter, the local licensing authority  
23 may issue to an applicant authorized to operate a farmer-winery under section nineteen B or in  
24 any other state, a special license for the sale of wine produced by or for the licensee in sealed  
25 containers for off-premise consumption at an indoor or outdoor agricultural event. All sales of  
26 wine shall be conducted by an agent, representative, or solicitor of the licensee to individuals  
27 who are at least twenty-one (21) years of age. A licensee under this section may provide,  
28 without charge, samples of wine to prospective customers at an indoor or outdoor agricultural  
29 event. All samples of wine shall be served by an agent, representative, or solicitor of the licensee  
30 to individuals who are at least twenty-one (21) years of age and all samples must be consumed in

the presence of the agent, representative, or solicitor of the licensee. Provided further that no sample shall exceed one (1) ounce of wine and no more than five (5) samples shall be served to any individual customer. For the purposes of this section, the term “agricultural event” shall be limited to those events certified by the department of agricultural resources as set forth herein below.

The licensee under this section shall obtain a special license from the local licensing authority. In order to obtain a special license from the local licensing authority, a licensee under this section shall file an application and plan with the department of agricultural resources that will demonstrate that the event is an agricultural event as set forth herein below. The application shall include a description of the event, the date(s) time and location of the event, a copy of the operational guidelines and/or rules for the event, written approval that the licensee has been approved as a vendor at the event, including the name and contact information of the on-site manager, and a plan depicting the premises and the specific location where the licensee will exercise it.

Upon review of the application and plan, the department may certify that the event is an agricultural event. The department shall consider the following factors in determining whether an event is an “agricultural event” for the purposes of this section: operation as a farmers’ market or agricultural fair approved and/or inspected by the department; frequency and regularity of the event, including date(s), time(s) and location(s); number of vendors; terms of vendor agreements; presence of an on-site manager; training of the on-site manager; operational guidelines and/or rules, which shall include vendor eligibility and produce source; focus of event on local agricultural products grown and/or produced within the market area; types of shows and/or exhibits, including those which are described in section 2(f) of chapter one hundred and twenty

54 eight; and sponsorship and/or operation by an agricultural or horticultural society organized  
55 under the laws of the Commonwealth, or by a local grange organization and/or association  
56 whose primary purpose is the promotion of agriculture and its allied industries. The department  
57 of agricultural resources may promulgate rules and regulations necessary for the operation,  
58 oversight, approval, and inspection of agricultural events under this Section.

59       Along with its application and prior to the issuance of a special license, the licensee shall  
60 file with the local licensing authority proof of certification from the department of agricultural  
61 resources with the local licensing authority prior to the issuance of a special license. The special  
62 license issued by the local licensing authority shall designate the specific premises, and date(s),  
63 and times covered. Any special license issued by the local licensing authority may be issued for  
64 an indoor or outdoor agricultural event which takes place on multiple dates and/or times during a  
65 single calendar year; but in no event shall any special license be issued for an agricultural event  
66 that will not take place within one (1) calendar year. A copy of a special license issued by the  
67 local licensing authority shall be submitted to the commission at least seven (7) days prior to the  
68 date the agricultural event is first scheduled to take place and shall be displayed conspicuously  
69 by the licensee at the licensed premises. The local licensing authority may charge a fee for each  
70 such special license issued, but such charge or fee shall not exceed fifty (50) dollars. Any  
71 special license granted pursuant to this section shall be nontransferable to any other person,  
72 corporation, or organization and shall be clearly marked nontransferable on the face of the  
73 license.

74       The commission may promulgate rules and regulations it deems appropriate to effectuate  
75 the purposes of this section.

**SECTION 5.** Section 17 of said chapter 138, as so appearing, is hereby amended by inserting after the last paragraph the following paragraph:

In addition to the number of licenses otherwise authorized to be granted by the provisions of this section, a city or town may grant additional licenses under sections twelve, fifteen or fifteen F to the holder of farmer-winery license under section 19B or in any other state for the sale of wine produced by or for said applicant. Any license issued by a city or town under section twelve, fifteen or fifteen F shall not be counted as a license for purposes of determining the number of licenses allowed to be issued by a city or town under the provisions of this section. Any license granted pursuant to this section shall be nontransferable to any other person, corporation or organization and shall be clearly marked nontransferable on the face of the license.

**SECTION 6.** Section 19B of said chapter 138, as so appearing, is hereby amended by inserting after the words “foreign country,” in subsection (g)(4), the following words:

(5) at retail by the bottle to consumers, for consumption off the winery premises in accordance with a license issued under section fifteen or fifteen F of this chapter.

(6) at retail by the glass or bottle to be consumed on the premises prescribed by a license issued by local authority pursuant to section twelve of this chapter.

**SECTION 7.** Section 19B of said chapter 138, as so appearing, is hereby amended by striking subsection (h) and inserting in place thereof the following words:

(h) A winegrower may not sell at retail to consumers any wine or winery product not produced by the winery or produced for the winery and sold under the winery brand name. All retail sales must be made on the winery premises, except where a winegrower obtains additional licenses for the sale of wine to consumers at additional locations off the winery premises at locations authorized by a license issued pursuant to sections fifteen and fifteen F of this chapter.